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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,074	09/08/2003	Jeffery C. Argentine	021630-004900US	1431
20350	7590	11/30/2005	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834				SOOHOO, TONY GLEN
ART UNIT		PAPER NUMBER		
		1723		

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/658,074	ARGENTINE, JEFFERY C.
	<b>Examiner</b> Tony G. Soohoo	<b>Art Unit</b> 1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 9-7-05.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-3,5,7-17,19 and 21-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,5,7-17,19 and 21-28 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>9-7-05</u> .	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### **Claim interpretation**

1. With regards to claims 2-3 the recitation of “configured to” is narrative and directed to the function of the device and has not invoked 35 USC 112, 6<sup>th</sup> paragraph.
2. Applicant has not invoked 35 USC 112, 6<sup>th</sup> paragraph with regards to the use of the phrase a linkage “configured to move material from a first container to a second container via a conduit” of claims 15-17. See in comparison to claim 1 whereby the containers are positively claimed.
3. Claim 16 is narrative in operation by the recitation of the device is configured to which is narrative and has not invoked 35 USC 112, 6<sup>th</sup> paragraph
4. Claim 17 is narrative to the intended use of the type of container which may be used as being a syringe. However since the claim does not positively claim the containers in the independent claim, and has not positively invoked 35 USC 112, 6<sup>th</sup> paragraph to the container, the recitation of a syringe is deemed immaterial to the claimed scope of the invention.
5. With regards to claims 9, 11, 16, 23, 25, the claims are narrative operation and does not point out any additional structural limitation or particular configuration of the elements of the claimed structure of the invention.
6. With regards to claim 14, 17, and 27, the mere recitation of “syringe” has been read in the broadest reasonable interpretation as merely directed to a structure with a chamber and piston structure and not limited to a particular a medical syringe or any device capable of holding a needle or providing an injection. Since the claim does not

positively point out any particular structure of the outlet which holds needles or of a shape or material to perform as a medical type syringe, the term syringe is read reasonably broad as understood.

7. With regards to claims 22 and 24 the claim attempt to claim "linkage geometry such tat... accomplished by force applied at a handle". The claim fails to positively claim a handle and fails to positively claim a particular structural geometry whereas the claim is merely narrative in operation and operational effect. Also the claims 22 and 24 do not require two different handles in combination.

8. Applicant has not invoked 35 USC 112, 6<sup>th</sup> paragraph with regards to the use of the phrase a linkage "configured to contact a first plungers of a first syringe to move material from a first syringe through a conduit to a second syringe" and also regards to the phrase "configured to contact a second plunger...". Accordingly the scope of the claims are deemed as not to invoke or limit the claims to a provision of the particular structure of the plunger, syringe or conduit, since such structure has not been positively claimed in the language of claim 26. See in comparison to claim 27 whereby the syringe is positively claimed.

9. Applicant has not invoked 35 USC 112, 6<sup>th</sup> paragraph with regards to the use of the phrase a linkage "configured to contact a first activator of a first container to move material from the first container through a conduit to a second container" and also regards to the phrase "configured to contact a second container...". Accordingly the scope of the claims are deemed as not to invoke or limit the claims to a provision of the

particular structure of the plunger, syringe or conduit, since such structure has not been positively claimed in the language of claim 28.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-3, 5, 7-11, 14-17, 19, and 21-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Ping 357,027 (previously cited)

The reference shows a base A, A' with feet a on the base, syringe cylinder containers, H, H with a respective pistons F,F, a 1<sup>st</sup> and 2<sup>nd</sup> linkages including two linkage rocker bars D(left side) or D(right side), (respectively left or respectively right of the base connection pivot point d') being connected to the base through a connection point d, and further having a respective 1<sup>st</sup> and 2<sup>nd</sup> pivot point located at the connection of the left and right side rocker bar linkages D left and D right with a respective 1<sup>st</sup> and 2<sup>nd</sup> linkage coupler bar E, E.

It is noted that material is moved between the tube syringes container between a chamber I through outlets h, h.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

13. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ping 357,027 (previously cited) .

With regards to claim 28, the Ping discloses all of the recited subject matter as defined within the scope of the claims with the exception of instructions for use of the apparatus. The provision of an instruction sheet is notoriously old and well known as a manner to teach the user in how to use the device properly. It is deemed that it would have been obvious to one of ordinary skill in the art to provide for a Todd reference with an instruction sheet so that a user may better perform the intended operation of the device so that the user may be unharmed or at least warned with regards to a possible injury due to an improper use of the device which would result in unwanted medical costs to the user.

14. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ping 357,027 in view of Wigglesworth et al 4876038, both previously cited.

With regards to claim 13, the Ping 357,027 in view of reference discloses the recited claimed elements as interpreted above however does not show the conduit between the syringes being a manifold tube.

The reference to Wigglesworth et al 4876038 discloses a device and method of mixing whereby two pistons 16, 26 in a 1<sup>st</sup> and 2<sup>nd</sup> chamber 20, 30 are connected by a manifold 38, 40 44, 46 whereby mixing is achieved by moving the flow across into and out of chambers 20, 30.

In view of the teaching by Wigglesworth that one may place a multi-port connection channel or manifold between two reciprocating pistons for mixing and to provide a convenient manner to charge and discharge the material from the syringes, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the conduit 30 between the syringes of the Ping reference so that there is a convenient manner to charge and discharge the mixed material.

### ***Response to Arguments***

15. Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection.

Applicant has amended the claims to require a 1<sup>st</sup> and 2<sup>nd</sup> linkage rocker and pivot points in combination which was not previously presented in combination within the original claims, thereby requiring a new grounds of rejection.

### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Marchand 38538 and Perrin 3353918 are further examples of the state of the art of pistons which cooperate to work material between respective chambers.

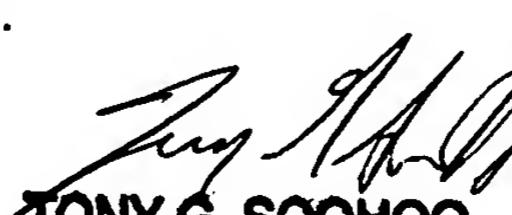
17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7-5PM,Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
TONY G. SOOHOO  
PRIMARY EXAMINER

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